

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7163

BILL NUMBER: SB 536

NOTE PREPARED: Mar 26, 2013

BILL AMENDED: Mar 25, 2013

SUBJECT: Synthetic Drugs.

FIRST AUTHOR: Sen. Merritt

FIRST SPONSOR: Rep. M. Smith

BILL STATUS: As Passed House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- A. *Added Enforcement Powers for Office of Attorney General* – The Office of the Attorney General (OAG) would be permitted to: (1) issue a civil investigative demand to obtain immediate access to records relating to the sale of synthetic drugs; (2) bring an action to abate a nuisance created in connection with the sale of synthetic drugs. (3) order the Department of State Revenue to suspend a person's registered retail merchant certificate if the court finds that the person committed a deceptive act involving the sale of a synthetic drug or lookalike substance.
- B. *Denial, Revocation, or Suspension of Licenses or Certificates for Dealing in Synthetic Drugs or Lookalike Substances* – Department of State Revenue would be permitted to revoke a retail merchant certificate if the holder commits certain violations relating to synthetic drugs. The Department of Homeland Security would be permitted to deny an applicant's request for license or certification or to permanently revoke a person's certificate or license under Title 16 if a person has been convicted of dealing in a synthetic drug lookalike. The Department of Labor would be required to deny, revoke, or suspend a person's elevator contractor or elevator mechanic's license for dealing in a synthetic drug lookalike substance.
- C. *Added Rule Making Powers* – Board of Pharmacy would be permitted, on its own initiative or upon formal request from the State Police Department, the federal Drug Enforcement Administration, or a Poison Control Center, to adopt an emergency rule declaring certain substances to be synthetic drugs.
- D. *New Powers to Enforce Synthetic and Lookalike Drug Crimes* – It authorizes the seizure of certain property used in connection with dealing in synthetic drugs.
- E. *New Civil and Criminal Offenses* – It provides that a person may be intoxicated if the person

consumes any substance resulting in impairment, with certain exceptions. It defines additional substances as synthetic drugs, and makes the sale of a synthetic drug lookalike substance a criminal offense. It makes possession of a lookalike substance an infraction and knowingly and intentionally possessing a lookalike substance a misdemeanor or felony. It adds dealing in synthetic drugs to the list of racketeering offenses.

F. It also makes conforming amendments.

Effective Date: Upon Passage.

Explanation of State Expenditures: *Added Enforcement Powers for Office of Attorney General* – OAG is currently working in a partnership with state agencies, local law enforcement agencies, and prosecuting attorneys to enforce the current ban on synthetic drugs. These added powers would permit the OAG staff to obtain immediate access to the records and materials of businesses suspected of selling synthetic drugs and lookalike substances and, under certain conditions, compel the Department of State Revenue to suspend a supplier's retail merchant certificate.

Denial, Revocation, or Suspension of Licenses or Certificates for Dealing or Possession of Synthetic Drugs or Lookalike Substances – These agencies already have the power to deny or revoke licenses if the license holder has been found guilty of other criminally related matters. There is no current law that criminalizes dealing in synthetic drug lookalike substances. Consequently, adding conviction of a crime involving synthetic drug lookalike substances as a reason for denial, revocation, or suspension should have minimal burden on these agencies over the biennium.

Added Rule Making Powers – The Board of Pharmacy is already authorized by statute to adopt emergency rules to define certain compounds as synthetic drugs. This provision adds new circumstances under which the Board of Pharmacy can issue these rules.

New Powers to Enforce Synthetic and Lookalike Drug Crimes – The amount of property forfeitures could increase, which could offset some police costs or increase funds deposited in the Common School Fund.

New Civil and Criminal Offenses – The addition of certain chemical compounds to and the expansion of the definition of synthetic drugs as an element of some felony and misdemeanor drug offenses may increase the number of offenders found guilty of these offenses. However, there are no data available to indicate how many more people may be convicted of these offenses as a result.

The following infractions and crimes are added by this bill.

New Infractions and Crimes Proposed		
<u>Offense</u>	<u>Synthetic Drug</u>	<u>Lookalike Substance</u>
Class B Infraction – Possession of synthetic or lookalike drug	New	New
Class A Infraction – Dealing	New	New
Class D Felony – Dealing with a prior dealing; possession with a prior possession	New	New
Class A Misdemeanor – Knowingly or intentionally dealing or possessing	Existing Law	New
Class D Felony – Knowingly or intentionally dealing and recipient is less than 18 years of age	Existing Law	New
Class D Felony – Knowingly or intentionally dealing and amount is more than two grams	Existing Law	New
Class D Felony – Knowingly or intentionally dealing and prior conviction of an offense involving synthetic or lookalike substance	Existing Law	New
Class C Felony – Knowingly or intentionally dealing more than two grams and person delivered on a school bus or within 500 feet of school property or a public park when a person under 18 could reasonably expect to be present	Existing Law	New

The terms of incarceration and any fines or infraction judgments are shown in the table below.

Offense	Class C Felony	Class D Felony	Class A Misdemeanor	Class A Infraction	Class B Infraction
Minimum	2 years	6 months			
Advisory	4 years	1.5 years			
Maximum	8 years	3 years	One year in jail or probation		
Criminal Fine maximum	\$10,000 ¹	\$10,000 ¹	\$5,000 ¹	\$10,000 ²	\$1,000 ²
¹ Fine is deposited in Common School Fund.					
² Infraction judgment is deposited in state General Fund.					

Explanation of State Revenues: *Drug Offenses* – See above table for criminal fines and infraction judgments.

Evidence of Intoxication – Adding this language may make it easier for law enforcement agencies to arrest persons for operating a vehicle while intoxicated. Any additional arrests and prosecutions cannot be determined. The clerk shall collect an alcohol and drug countermeasures fee of \$200 in each action, with 25% of the countermeasures fee to be deposited in the State User Fee Fund.

If court actions are filed and a judgment is entered, a court fee of either \$70 for infractions or \$120 for a felony or misdemeanor conviction would be assessed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the automated record keeping fee (\$5), judicial salaries fee (\$20), public defense administration fee (\$5), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$2) are deposited into the state General Fund.

In addition, persons convicted of a drug-related offense may also be liable for a drug abuse, prosecution, interdiction and correction fee ranging between \$200 and \$1,000. The revenue collected from this fee is deposited in the State User Fee Fund and distributed to state and local programs.

Forfeiture – The proceeds from the sale of seized property are distributed first to the county sheriff to cover sale costs, then to any person holding a valid lien or having an interest in the property, and then to the Common School Fund as ordered by the court.

Explanation of Local Expenditures: *Drug Offenses* – If more Class D and Class C felony offense defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. In addition, a Class A misdemeanor is punishable by up to one year in jail. The average cost per day is approximately \$44.

Forfeiture – The prosecuting attorney for the county in which the seizure occurred may cause an action for reimbursement of law enforcement costs to be brought by filing a complaint in the circuit, superior, or county court of the jurisdiction and may retain an attorney to bring the action.

Explanation of Local Revenues: *Evidence of Intoxication* – If more persons are arrested and found guilty of operating a vehicle while intoxicated and the court assesses the Alcohol and Drug Countermeasures Fee, then local units of government would receive 75% of any fee revenue collected.

Drug Offenses – If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of either the infraction costs fee (\$70) or criminal costs fee (\$120) that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the criminal costs fee. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

In addition, if a person is convicted of a drug-related offense and the county has established a weed control board, a sentencing court may assess a marijuana eradication fee of not more than \$300. Revenue collected from the marijuana eradication fee is deposited into the county user fee fund.

The court may also assess an alcohol and drug services program fee of not more than \$300 if a local government has established an alcohol and drug services program. Revenue collected from the alcohol and drug services program fee is deposited in the county or city or town user fee fund.

Forfeiture – A county sheriff may retain proceeds from the sale of a seized property to offset costs associated with its sale.

State Agencies Affected: DOC; Department of Homeland Security; Department of State Revenue; Department of Education; BMV; Licensing or certifying boards, commissions, and committees.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association; Department of Correction.

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